

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

M-CUBED, LLC, et al.,

Plaintiff(s),

V.

MAERSK, INC., et al.,

Defendant(s).

NO. C06-1403MJP

ORDER ON MOTION FOR RECONSIDERATION

The above-entitled Court, having received and reviewed:

1. Plaintiffs' Motion for Reconsideration (Dkt. No. 83)
2. Defendants' Response to Plaintiffs' Motion for Reconsideration (Dkt. No. 91)

and all exhibits and declarations attached thereto, makes the following ruling:

IT IS ORDERED that the motion is DENIED.

Discussion

Civil Rule 7(h) of the Local Rules of the Western District of Washington states:

Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.

By this Court's order of November 29, 2007, partial summary judgment was granted to Defendants. Dkt. No. 80. The ruling was premised on the Court's finding that Plaintiff had failed to establish a "quasi-deviation" sufficient to avoid the liability limits of the shipping contract which it had entered into with Defendant.

Plaintiff characterizes the essence (and the error) of the Court's ruling as follows: Because there is no proof that Defendant's agents intended the total loss or destruction of the MiG fuselage, there can be no finding of quasi-deviation and therefore no claim for an exemption to the liability

1 limitation under the bill of lading. Pltf. Mtn, p. 3.¹ Plaintiff then cites a number of cases which hold
2 that total loss or destruction are not required to meet the elements of “quasi-deviation.” *E.g.*, Nemeth
3 v. General S.S. Corp., 694, F.2d 609 (9th Cir. 1982); Hellenic Lines LTD v. U.S., 512 F.2d 1196 (2d
4 Cir. 1975); Spartus Corp. v. S/S Yafo, 590 F.2d 1310 (5th Cir. 1979); Calmaquip Engineering West
5 Hemisphere Corp. v. West Coast Carriers, Ltd., 650 F.2d 633 (5h Cir. 1981); Jindo Am., Inc. v. M/V
6 Tolten, 2003 AMC 1312, 2001 U.S. Dist. LEXIS 25460 at *3, *18 (C.D. Cal.); Surrendra (Overseas)
7 Private, Ltd. v. S.S. Hellenic Hero, 213 F.Supp. 97 (S.D.N.Y. 1963).²

8 There are several problems with Plaintiff's analysis. The first is that, although it is true that
9 something less than total destruction will suffice to find quasi-deviation, Plaintiff cites no case that
10 holds that a delay in delivery (in and of itself) is enough to create an actionable deviation. All of
11 Plaintiff's cases involve some form of destruction or loss of the property, which has not occurred here.
12 And the extent of that loss plays a role in the quasi-deviation analysis: “[T]he unreasonableness of the
13 deviation is ‘determined largely by the extent, scope and nature of the risk. . . imposed on the cargo.’”
14 Vision Air Flight Service, Inc. v. M/V National Pride, 155 F.3d 1165, 1172 (9th Cir. 1998).

15 The second and fatal flaw in the motion is that Plaintiff ignores the required connection
16 between the type of injury (whether it is delay, partial loss or total destruction) and the intent of the
17 actor. It may well be that a lengthy delay in delivery might suffice for a finding of quasi-deviation, but
18 an element of Plaintiff's proof is a showing that Defendant's agents intended a prolonged delay (or
19 were "substantially certain" that it would occur) when they made the decision to offload the cargo in
20 Hong Kong. The best evidence Plaintiff could present was testimony by Defendant's agents that they

¹ The Court does not agree with Plaintiff's characterization of the ruling, but clarification of this point is not necessary for purposes of analyzing Plaintiff's argument.

² Plaintiff also cites, as a “seminal case relied on by the Ninth Circuit find [sic] quasi-deviation waives COGSA limitation of liability for partial loss,” Jones v. The Flying Clipper, 116 F.Supp. 386 (S.D.N.Y. 1953). Pltf Mtn, p. 2. Although this is a “partial loss” case, that fact was not significant to the court’s holding and this Court does not find it to be persuasive authority in favor of Plaintiff’s position.

1 knew that the offloading would create some temporary delay which they expected would be quickly
 2 remedied (possibly with a fine against Maersk), following which the jet would be on its way. The
 3 delay which Defendant's agents intended is not sufficient in extent, scope or nature to meet that
 4 element of Plaintiff's proof.³

5 It is worth pointing out that nowhere in Plaintiff's original motion for summary judgment do
 6 they raise the issue of "delay" as an element of deviation at all. Their entire argument is couched in
 7 terms of "forfeiture," "seizure," "loss" and "damage." Dkt. No. 42, pp. 18, 23. In their responsive
 8 pleadings to Defendant's summary judgment motion, they do make reference to "indefinite detention"
 9 (Dkt. No. 60, pp. 3, 22), and the risks that could have been avoided if no deviation occurred (Id., p.
 10 17). But even assuming that this is sufficient to raise the issue on a motion for reconsideration,
 11 Plaintiff still has failed to establish that a genuine issue of material fact existed on the question of
 12 Defendant's intent.

13 Finally, Plaintiff reproduces in some length the findings of the Hong Kong Magistrate who
 14 ruled that the fuselage should be returned to Plaintiff. Declaration of Yin, Exh. A. The ruling includes
 15 several findings that Maersk's agents knew they were in violation of the Hong Kong shipping
 16 regulations when the undeclared MiG was offloaded in that port. Plaintiff claims this as a "new fact"
 17 which "further demonstrate[s] that Maersk actually believed that its actions would be substantially
 18 certain to cause serious harm to the fuselage." Pltf Mtn, p. 5.

19 Defendant has never controverted that its agents were aware that they were violating Hong
 20 Kong customs regulations, so the Court does not consider this evidence to constitute a "new fact."
 21 And even if it did, it does not alter the undisputed testimony that the agents' belief was that this
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 25 ³ "Plaintiff concedes that not any slight delay or damage is sufficient" for a finding of quasi-deviation. Pltf
 Mtn., p. 3.

1 violation would result in a slight delay while they obtained the necessary papers and possibly incurred
2 a fine. As previously ruled, this will not suffice to prove a quasi-deviation under the current case law.

3 **Conclusion**

4 Plaintiffs have established neither a manifest error of law, nor brought forth new facts sufficient
5 to support a reconsideration of the Court's original ruling. Their motion for reconsideration will be
6 DENIED.

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8 The clerk is directed to provide copies of this order to all counsel of record.

9 Dated: February 22, 2008



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11 Marsha J. Pechman
12 U.S. District Judge
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